REMARKS

This paper is filed in response to the Restriction Requirement set forth in the Office action (Paper No. 20071124) mailed on 27 November 2007, reconsideration and re-examination are respectfully requested.

Listing of the Claims

Pursuant to 37 CFR §1.121(c), this listing of the claims, including the text of the claims, will serve to replace all prior versions of the claims, in the application.

Amendment of the Claims

Claims 7 and 14 have been canceled without prejudice or disclaimer of their subject matter, and claims 4, 8, 11 and 15 have been amended. Specifically, recitations of canceled claims 7 and 14 are incorporated into independent claims 4 and 11, respectively. Claims 8 and 15 are amended merely to change dependency from the canceled claims.

Status of the Claims

Claims 1 through 6, 8 through 13, 15 and 16 are pending in the application.

Requirement for Restriction - 37 CFR §1.142

In the Office action mailed on 27 November 2007 (Paper No. 20071124), the Examiner required a restriction under 35 U.S.C. §121 and 37 CFR §1.142, between:

- **Group I:** Claims 1-3, drawn to an apparatus for providing inter-processor communication using transmission control protocol/Internet protocol in a communication system, classified in class 709, subclass 251;

- **Group II:** Claims 4-16, drawn to a system providing inter-processor communication using transmission protocol with an accessing network controller, a side area switching, a data location register management system coupled to Ethernet network, classified in class

709, subclass 220.

Applicants respectfully traverse the election requirement imposed in the Office action, but provisionally elect Group I..

Applicants object to and traverse the restriction requirement on the grounds that the subject matter of the two groups overlap. It is submitted that, independent claims 1, 4 and 11, as now amended, commonly include an apparatus for providing inter processor communication and subsystem. Consequently, claims 1 through 6, 8 through 13, 15 and 16 are directed to the elected subject matter of Group I.

In addition, the mandatory fields of search for the two embodiments are coextensive. Finally, it appears that the restriction requirement is being imposed merely for administrative convenience, and such a basis for imposition of a restriction requirement has been prohibited in previous decisions of the Commissioner.

The following listing of art included within both Groups I and Group II demonstrates both the lack of burden upon the Examining staff in making a simultaneous search of both Groups I and II and the absence of evidence that Groups I and II are distinct. As specifically stated in MPEP §803, in imposing a restriction requirement, the Examiner must show that:

(A) the inventions are independent (*see* MPEP §802.01, §806.04, §808.01) or distinct as claimed (*see* MPEP §806.05 - §806.05(i)); **and**

(B) there will be a **serious burden** on the Examiner if the restriction requirement is not imposed (*see* MPEP §803.02, §806.04(a) -§806.04(i),§808.01(a), and §808.02). It is respectfully submitted that there would **not be a serious burden** upon the Examiner in searching Groups I and II.

Firstly, the Examiner has failed to show any type of burden, much less a serious burden, in the absence of a restriction requirement. In particular, not only has the Examiner failed to show that the search would impose a burden, but also the Examiner has failed to show that any burden would rise to the level of a serious burden. As stipulated in MPEP §803, if the search can be made without serious burden, the Examiner **must examine the application on the merits**, even if there are separate and distinct inventions. The Examiner has not alleged any serious burden in the Office

action mailed on 27 November 2007 (Paper No. 20071124) and thus the Examiner must examine the entire application. Moreover, because no burden was shown, if the restriction is not withdrawn in the next Office action, the restriction requirement cannot be made final according to MPEP §706.07.

Secondly, whereas the Examiner has stated that the invention of Group I including claims 1 through 3, drawn to an apparatus for providing inter-processor communication using transmission control protocol/Internet protocol in a communication system, classified in class 709, subclass 251; and Group II including claims 4 through 16, drawn to a system providing inter-processor communication using transmission protocol with an accessing network controller, a side area switching, a data location register management system coupled to Ethernet network, classified in class 709, subclass 220, it is submitted that, in order to perform a comprehensive search, the Examiner is going to be compelled to perform some searching in both classes 709. A search of the U.S. Patent Collection produced the following partial list of recent U.S. Patent issues which are in fact classified in both class 709, at subclasses 251 and 220 :

Results of Search in US Patent Collection db for:

(CCL/709/251$ AND CCL/709/220$): 11 patents.

Hits 1 through 11 out of 11

	PAT. NO.	Title
1	7,269,697	Apparatus and methodology for an input port scheduler
2	6,754,729	Internally connected network interface cards for clustered processing
3	6,657,951	Backup CRF VLAN
4	6,167,454	Address setting method and communication system employing the address setting method in a multiple ring network utilizing variably set addresses and address write enable/disable states
5	6,138,165	Address setting method and communication system employing the address setting method in a multiple ring network utilizing variably set addresses and address write enable/disable states
6	5,956,719	Synchronization method applied to databases in network management system

7	5,802,321	Synchronous serial communication network for controlling single point I/O devices
8	5,758,070	System for dynamically determining a network media type of a LAN using frame type identifying value from a configuration table
9	5,627,969	Universal link configurator for physical link configurations in a data link node
10	5,522,047	Graceful insertion of a tree into a ring network
11	5,408,610	Communication control apparatus which communicates management information in a communication system

It is submitted that Applicants' foregoing listing of a search of the U.S. Patent Collection produced the above-repeated partial list of recent U.S. Patent publications and U.S. patent issued which are in fact classified in both class 709, at subclass 251 and 220. This is demonstrative evidence not that the elected and non-elected subject matter have acquired separate status in the art, but that under current, and long-standing U.S. Office practice, the elected and non-elected subject matter are examined concurrently. Thus, under long standing Office practice extending over approximately three decades, the fields of search are coextensive with respect to the two groups of claims, and therefore the restriction requirement serves no purpose other than to impose an undue burden and unnecessary expense upon the Applicants (*see* MPEP §802.01, §806.04, §808.01).

Thirdly, *MPEP* §806.03 states that:

> "Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween **should never be required**. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition" (emphasis supplied).

Why, then has this prohibition been violated in the above-captioned application where a single embodiment has been disclosed? That fact that Applicants' claims are very broad in scope, and cover a plethora of implementations of the principles of Applicants' inventions, is not a basis for violating this prohibition against restriction. Withdrawal of this requirement is therefore
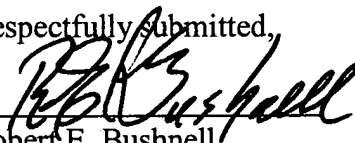
respectfully urged.

For the above reasons, it is respectfully submitted that the restriction requirement is unnecessary, is not in accordance with the Rules of Practice or the *Manual of Patent Examining Procedure*, and constitutes the imposition of an undue burden and unfair expense upon the Applicants. Therefore, the restriction requirement should be withdrawn.

If the requirement for restriction is not withdrawn, then the Applicants reserve the right to file a Petition to the Commissioner because there is no *serious* burden upon the Examiner in searching the invention of Group I and Group II.

In view of the foregoing demonstration of the impropriety of this requirement, it is requested that the restriction requirement be withdrawn. It is further submitted that the application is in condition for examination on the merits, and early allowance is requested.

No fee is incurred by this Amendment and Response.

Respectfully Submitted,

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